

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-7676-2013 (O&M)

Date of Decision: March 28, 2019

Jai Parkash(since deceased) through LRs

.....Petitioners

Versus

Sanjeev Bansal (since deceased) through LRs

.....Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Amit Jain, Advocate
for the petitioners.
Mr. B.R. Gupta, Advocate
for the respondents.

JAISHREE THAKUR, J. (ORAL)

1. That the petitioner/tenant (through his LRs) filed the present revision petition seeking to challenge the judgments dated 11.10.2010 and 16.10.2013 passed by the Rent Controller, Kurukshetra and Appellate Authority respectively allowing the eviction of the petitioner /tenant from the demised premises.

2. That the brief facts of the case are that the respondent-landlord (respondent for short) filed an eviction petition against the petitioner/tenant (petitioner for short) for seeking his eviction from a shop, i.e. shop bearing

House tax registration No.630, Ward No.8, near Old company office, Town Shahabad, District Kurukshetra, for not paying the rent due, for damaging the entire inner portion of the shop, and that the premises were required for the commencement of general store business of his father, who had retired from the office of Accountant General Haryana in August, 2004.

3. The petitioner contested the eviction petition and filed his written statement and inter-alia took preliminary objection that the respondent/landlord had no right, title or interest to file and maintain the petition as the petitioner paid the rent of the shop in question till September, 2005 along with the house tax. The petitioner averred that he had paid the rent for the month of September, 2005 on 01.09.2005 and also paid the house tax on 01.09.2005 but the respondent never issued any receipt of rent. He further took objection that the respondent did not come to the Court with clean hands and had suppressed the material facts from the Court. The petitioner denied that he has any other shop in the Shahbad town except the shop in question. The petitioner paid the rent as assessed by the Rent Controller amounting to ₹23,122/- for the period 1.9.2003 to 30.9.2003 under protest reserving his right to recover the rent up to month of September 2005 being already paid by him. On the basis of the pleadings, the Rent Controller framed the following issues:-

- “1. Whether the respondent is liable to be ejected from the shop on the ground mentioned in the petition? OPP
2. Whether the petitioner has no cause of action to file the present petition? OPR
3. Whether the petitioner has not come in this Court with clean hands? OPR

4. *Relief.”*

On the basis of the evidence led by the parties, the Rent Controller vide order dated 11.10.2010 concluded that the respondent/landlord has bona-fide requirement and directed the petitioner to vacate the demised shop within a period of three months from the date of passing of the order.

4. The order of the Rent Controller was challenged before the Appellate Authority. The Appellate Authority vide its order dated 16.10.2013 upheld the order of the Rent Controller and held that the need of the father of the respondent to shift to Shahbad and start a business is absolutely bona-fide and he is entitled to seek eviction of the tenant from the shop in question. The appeal of the petitioner was dismissed accordingly.

5. The petitioner (through LRs) has filed the present revision against the judgment of the Appellate Authority.

6. Learned counsel appearing on behalf of the petitioners argues that the respondent had failed to disclose and plead essential ingredients required under Section 13 (3) (a) of the Haryana Urban (Control of Rent and Eviction) Act, 1973. It is contended that non-disclosure and concealment that he has another shop in his possession is fatal to the eviction petition. In this regard, he places reliance on a judgment rendered in **Babli and Others vs. Kumari Ruchi Bansal and Another, 2017(1)RCR(Civil)152**, in **Manmohan Lal vs. Shanti Prakash Jain, 2014(2) RCR(Rent)223**, in **Sant Piare Lal vs. Sat Paul, 2002 RCR 226**, in **M/s Jaspreet Takhar vs. Ghai Enterprises, 2013(1)RCR (Rent) 469**. It is also argued that the landlord has

since died and the father, for whom the eviction was sought, is working in a private concern and is earning a handsome amount from Trisis Ventures which is located in Baddi, Himachal Pradesh. He has been appointed on a fixed salary of ₹25,000/- per month and is being paid ₹33,000/- inclusive of perks and allowances, and therefore, the purpose of seeking eviction does not survive.

7. Per contra learned counsel appearing on behalf of the respondents would contend that non-pleading of the essential ingredients under Section 13(3)(a)(i) of the Act is not a fatal flaw as long as evidence has been led in this regard. Reliance in this regard has been placed upon the judgment rendered in **Hans Raj Bhatia vs. Vijay Kumar, 2011(1)HLR 51 (P&H)**. He has also placed reliance upon a judgment rendered in **Hindustan Petroleum Corporation Limited vs. Dilbahar Singh, 2014(2) RCR(Rent)210** a judgment rendered by the Constitution Bench to the effect that in finding of fact recorded by an Appellate Court, the High Court holds no power to re-appreciate the evidence and to come to a different conclusion.

8. I have heard learned counsel for the parties and with their assistance have gone through the pleadings and the case law.

9. There is no doubt a concurrent finding of fact by both the Courts below, that the premises in question is required to set up the father of the respondent in business after his retirement. An argument has been raised that the eviction petition is not maintainable as essential ingredients under Section 13(3)(a)(i) have not been pleaded. It is true that the Full Bench in **Banke Ram vs. Smt. Saraswati Devi, 1977(1)RCR (Rent)595** has held that

it is mandatory to plead the essential ingredients that he requires the demised premises for his own personal need and that he had not vacated any house in the municipal area where the demised premises is situated and to plead that he was not occupying any other premises in the area, but the petitioner herein did not raise any objection thereto in his written statement.

In the judgment rendered in **Sat Prakash Chaudhry vs. Kewal Krishan Malhotra, 2010(4) PLR 622** it has been held that, *“there is no dispute to the proposition of law as enunciated in the Full Bench judgment relied upon by the learned counsel for the petitioner. But, at the same time, the Court cannot be oblivious to the fact that mere non-pleading of a fact, which is enshrined in the statute, can always be rectified if a relevant objection is taken at the initial stage. The petitioner failed to take any such objection in his reply to the petition. The pleadings have to be considered broadly in a rent petition where it is not captive to the strict law of interpretation which may be the situation in a civil suit. In rent proceedings, the Rent Controller is merely obliged to hold an inquiry to look into the averments which have been made in the petitioner.”* This view has been followed in a subsequent case **Gurbaj Singh v. Parshotam Singh (2011)3 PLR 653**. The petition filed under Section 13(3)(a)(i)a of the Haryana Urban (Control of Rent & Eviction) Act, 1973, before the Rent Controller categorically states that the father of the landlord-respondent has retired from the office of the Accountant General, Haryana and wanted to settle in his home town after retirement and was to commence his general store business in the shop in question. The petitioner further pleaded personal necessity on account of settling his retired father. In this regard,

evidence has been led by both the late landlord Sanjeev Bansal and his father by way of an affidavit stating that he requires the premises for his personal use i.e. for his father's business while further stating that he had not got vacated any other shop on these grounds at any place. The argument that the respondent failed to plead or state that that he is not occupying any other shop would loose significance since there was objection taken in the written statement nor any issues framed. Moreover the petitioner was not caught unaware and did put the landlord relevant questions in this regard. There is substantial evidence on the record to establish that the ingredients of section 13(3)(a)(i)a of the Rent Act have been complied with insofar as evidence has been led and the tenant is not caught unaware. Reliance in this regard may be placed upon the judgment rendered in ***M/s Bhatia Cloth House vs. Dr. Raj Kumar Gupta, 2008(4)RCR(Civil)250*** and ***Raj Kumar vs. Budha Mal 2011(02)RCR(rent)60***, wherein it has been held that “*it is consistent position of law that ambiguity in pleadings regarding the ingredients set out in Section 13(3)a of the Act have made good of the evidence as sufficient compliance of the statutory provisions*”. The same view has been taken in the judgment rendered in ***S.S. Maan vs. A.K. Sharma reported in 2013(4)RCR(Civil)154*** wherein para 8 it has been held that “*It is cardinal principle of law that technicalities are handmaids of justice and they should not be hindrance in imparting substantial justice. In the present case, it has not been shown by learned Counsel for the tenant as to how any prejudice has been caused to him by non-pleading of the ingredients as referred by him in his arguments. No doubt, the pleading of all the ingredients are necessary for any person to seek relief, but at the same time if the party*

leads positive evidence to prove a certain ingredient, although not pleaded then the Court cannot throw him away on mere technicalities, if it is otherwise proved that no prejudice has been caused to him”.

10. Further a perusal of the judgments of the Courts below would show that both the Courts below have negated the plea that there is another shop available which could be used by the landlord for settling his father on the ground that it is not for the tenant to dictate to the landlord as to which of the shops can or should be used. The Courts have relied upon judgments rendered in **Daulat Ram vs. Girdhari Lal, 1980 PLR 182(P&H)**, in **M/s Kanika Engineering Works and another vs. Gian Chand Goyal, 2009(1) HLR126 (P&H)**, and in **Ram Saroop vs. Desh Bandhu Bhalla, 2010(2) HLR 546 (O&H)**. There is no infirmity in the said finding.

11. The other argument that has been raised is that the need of the father does not subsist since he has already got a job in Baddi and is earning a handsome salary of ₹33,000/- per month inclusive of perks etc., however, this Court is not inclined to accept this argument. No doubt the father of the deceased landlord is working at Baddi, however, it also cannot be lost sight of that his son, the earning member of the family, passed away during the pendency of the proceedings and there is a family to support. He could not be expected to sit idle while the daily family requirements have to be met. If he can travel to Baddi to earn his livelihood in order to support the younger members of the family, he could also work for himself in a shop that belonged to his late son and be his own master. Therefore, the plea that the premises are not required now is hereby negated.

12. In view of the above findings, the instant petition stands

dismissed.

March 28, 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No